Supreme Court, U.S.
FILED
JAN 7 1998
CLERK

No. 97-940

In The

Supreme Court of the United States

October Term, 1997

J. E. SIMMONS,

Petitioner,

vs.

WEBSTER COUNTY, acting by and through its BOARD OF COUNTY COMMISSIONERS,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Georgia

RESPONDENT'S BRIEF IN OPPOSITION

WILBUR T. GAMBLE, III
P.O. Box 577
177 South Main Street
Dawson, Georgia 31742
(912) 995-5657

RALPH L. PHILLIPS, P.C.
Counsel of Record
P.O. Box 71563
2549 Lafayette Plaza Drive
Albany, Georgia 31708-0029
(912) 888-2022

Attorneys for Respondent

9 pp

TABLE OF CONTENTS

	Page
Statement of the Case	1
Reasons for Denying the Writ	1
Conclusion	7

TABLE OF CITATIONS

Cases Cited:

Allen v. Hall County, 156 Ga. App. 629, 275 S.E. 2d 713 (1990)	6, 7
Earth Management, Inc. v. Heard County, 248 Ga. 442, 283, S.E. 2d 455 (1981)	5
Harwell v. Georgia Power Company, 154 Ga. App. 142, 267 S.E. 2d 769 (1980)	4, 5
Johnson v. Fulton County, 103 Ga. App. 873, 121 S.E. 2d 54 (1961)	2, 3
Sweat v. Georgia Power, 235 Ga. 281, 219 S.E. 2d 384 (1975)	4, 5, 6

Statutes Cited:

Code Annotated 6-701(A2)	4
Official Code of Georgia Annotated, § 22-2-100 - 114	2
Special Master's Act, 1957	7

STATEMENT OF THE CASE

Respondent, Webster County, agrees with the general statement of the case included in Petitioner's Petition for Writ of Certiorari, with a few exceptions. Respondent disagrees with the assertion that the condemnation proceeding included an attempt by the County to create a public lake or recreational area for any citizens of the County of Webster. Webster County has no intention of creating a public facility and the express purpose of obtaining the property was to repair the roadbed which had been washed out by the flood. In repairing the roadbed, it was necessary for the dam to be recreated because the old lake bed relied upon the road as the damming agent for the lake. In addition to the dam, a drainage control system was necessary to insure that the County had a mechanism available to release water to avoid the dam being washed out upon a flooding situation similar to the great flood of 1994. Thus, the drainage control was placed on County property, upon the completion of the condemnation of the site, to insure the roadbed would not be washed out again during flooding. All other procedural information contained in Petitioner's Petition is accurate as to filing and Court rulings.

REASONS FOR DENYING THE WRIT

Respondent respectfully shows this Court that Petitioner's Request for Petition for Writ of Certiorari should be denied. Petitioner's rights are adequately protected by Georgia Law and the mechanisms necessary to protect these rights have been employed by the Petitioner with unfavorable results toward the Petitioner's position in this matter.

The Petitioner complains the State of Georgia does not have an adequate statutory framework to protect his rights concerning "non-value" issues in a condemnation. Specifically, the

Petitioner argues he was not afforded the right to contest the width of the easement obtained by the County, or even the necessity of the easement and condemnation occurring.

Petitioner complained case law which has established certain rights under the Special Master's Act, Georgia Laws, 1957, as amended, is inadequate to protect his rights. He further complains the codified law of the Special Master's Act under the Official Code of Georgia Annotated, § 22-2-100 through § 22-2-114, is also inadequate.

Petitioner's position is clearly erroneous. Georgia Law provides a very distinct and clear manner for all non-value issues to be challenged under the Special Master's Act.

A Georgia Court of Appeals case concerning the condemnation of property by Fulton County succinctly and exhaustively outlined the entire condemnation process and the rights afforded under condemnation by Georgia Law. *Johnson v. Fulton County*, 103 Ga. App. 873, 121 S.E. 2d 54 (1961). The court first noted that Georgia allowed a condemnor to elect to use either the Special Master's Law, which was enacted in 1957, or the older Three Assessor Law, enacted in 1894. *Id.* at 876. The court noted the Condemnor had the right to make the decision as to which method of procedure is used. *Id.* First and foremost, the Special Master's Act established three important principles: (1) The original arbiter must be a competent attorney under oath whose relation and accountability to the court shall be that of an auditor or master in the general practice. *Id.* at 877. (2) The Special Master must make an accurate determination of what constitutes a taking for the purposes of the act. *Id.* (3) The Special Master decides all value and non-value issues and, absent properly filed exceptions, the decision is final. The court noted,

> It being the purpose of this Chapter 2, so far as reasonably possible, to protect the rights of all parties to be heard at the time of the hearing before the Special Master, but that, so far as the right to take or damage the property, or any interest therein, by the condemning body, upon payment of the amount of the award by the Special Master into the registry of the Court, is concerned, the award of the Special Master and the Judgment of the Court condemning the property for the use of the condemning body shall be conclusive.

Id. at 878.

The court opined, nothing could be more definite than the powers imposed by this act. *Id.*

The Three Assessor's Law had certain weaknesses; mainly, it was not speedy enough and problems with injunctive relief. *Id.* at 881. The Special Master's Act attempted to create a condemnation proceeding which would be more efficient and effective. This act clearly provides any condemnee may present to the Special Master claims about the value of the property and any other matters material to their rights therein. *Id.* The condemnee has every opportunity to provide all objections and exceptions to non-value issues before the Special Master. He does not, however, have the right to a trial by jury concerning non-value issues and the *Johnson* case is clear, a trial by jury is not a constitutional right and it is clearly up to the legislature to determine whether or not a jury or the judiciary shall decide these matters. *Id.* at 882.

Georgia Law is clear that although there is no right to appeal a Special Master's award to a jury on non-value issues, an appeal can be held before the Superior Court, so long as exceptions

have been timely filed. *Sweat v. Georgia Power*, 235 Ga. 281, 219 S.E. 2d 384 (1975). Once these exceptions have been filed before the Special Master, the trial court may hear these exceptions anew. Petitioner proceeded with this process in the case at hand. Once the trial court overruled the Petitioner's exceptions, Petitioner filed with the Georgia Court of Appeals and with the Georgia Supreme Court to argue the findings were incorrect concerning non-value issues. The Georgia Court of Appeals ruled against the Petitioner. The Georgia Supreme Court refused to grant Certiorari on the matter. Petitioner has used every avenue necessary to challenge non-value issues. Petitioner has been afforded his due process rights and all other rights guaranteed under the Constitution to challenge non-value issues. The only issue which the Petitioner is upset about is, in truth, an adverse ruling concerning his belief the area taken was incorrect. The process used to determine this matter is the same process which has been in effect since at least 1957. Georgia Law has clearly outlined the procedure necessary to challenge non-value issues as explained in *Sweat v. Georgia Power Company*.

It is illogical to argue that Georgia Law does not grant protection to a condemnee on non-value issues. In 1979, the Georgia Power Company, Georgia's predominate utility company, initiated a condemnation proceeding against Ms. Camilla Hardy Harwell. *Harwell v. Georgia Power Company*, 154 Ga. App. 142, 267 S.E. 2d 769 (1980). Ms. Harwell, in her responsive pleadings, and at the hearing before the Special Master, challenged the authority of Georgia Power concerning the condemnation alleging there was no necessity for the taking of the entire tract and other matters. *Id.* at 145. The Superior Court denied every exception and Ms. Harwell appealed to the Georgia Appellate Court by properly filing an Interlocutory Appeal, permission having been granted pursuant to Code Annotated § 6-701(A2). *Id.* at 146. Ms. Harwell's challenge to

the taking of Georgia Power was not ruled in her favor because the court found there was a legitimate public need for the condemnation of the real property. *Id.* at 147. This case, however, illustrates a procedure exists for challenging findings concerning non-value issues and the court will hear these matters.

While *Harwell* establishes the procedure exists and allows the opportunity to be heard, the case of *Earth Management, Inc. v. Heard County*, 248 Ga. 442, 283 S.E. 2d 455 (1981) clearly establishes such challenges can be heard and ruled in favor of the condemnee. In *Earth Management* a company sought to develop a hazardous waste disposal facility in Heard County. *Id.* at 442. In response to this attempt, Heard County proceeded to condemn the property in which Earth Management held an option to purchase to create a public park and, in effect, thwart the efforts of Earth Management to create this hazardous site. *Id.* Earth Management challenged the condemnation proceeding which granted the condemnation to Heard County on several grounds, including constitutional due process deficiencies. *Id.* at 445. The court cited *Sweat v. Georgia Power Company*, and stated the Special Master's Act is constitutional and not violative of due process rights of the condemnee. *Id.* Earth Management further contended they did not receive proper notice of the Special Master's condemnation findings and, therefore, were barred from filing exceptions prior to judgment being rendered. *Id.* at 445-446. The court ruled the Judge had stayed the judgment until such time as he heard Earth Management's exceptions and contentions concerning non-value issues and, therefore, any defect in this matter was cured. *Id.*

The court, however, did find that the motivation and reason behind the condemnation was based, not on public necessity, but rather on an attempt to stop the building of this hazardous waste site. Because of this improper motivation, the court overruled the Special Master's finding and determined the

condemnation was improper. *Id.* at 448. The non-value issue of whether or not the condemnation should have proceeded forward was heard by the Special Master, Superior Court Judge, and the highest court in Georgia. After having heard the evidence, the highest court ruled in favor of the condemnee. Clearly, a definitive procedure existed to allow the condemnee the opportunity to challenge the non-value issues. This definitive procedure exists for the Petitioner in Georgia today. Petitioner has exhausted this avenue and is now unhappy with the results. Unhappiness with the results, however, does not equate with the necessity of the United States Supreme Court hearing this matter.

Georgia courts have ruled the primary duty of the Special Master is to ascertain the value of property; but his other legal duties are also to determine the right of the condemnor to condemn, the interest to be condemned, the nature of the interest taken, and the effect of the condemnation upon the respective rights of the parties so long as the parties raise these issues at the Special Master's Hearing. *Allen v. Hall County*, 156 Ga. App. 629, 275 S.E. 2d 713 (1980) at 631. The case goes further to state:

> To raise objections, exceptions must be taken to the Master's findings prior to the Superior Court's entry of an Order and Judgment condemning the property. Failure to make these exceptions will finalize the Judgment of the Court, unless the Judgment is reversed or set aside in a manner provided by law.

Id. at 631.

The *Allen* case further explained that the parties to the case had failed to properly raise exceptions prior to the Final Judgment being rendered. Therefore, their rights were waived.

Id. In the present case, Petitioner did not waive his rights in the proceeding, but rather filed proper exceptions, had these exceptions rejected by the Special Master, Superior Court Judge, and the Appellate Courts of Georgia. Petitioner's real complaint results from his dissatisfaction with the ruling of these courts. The procedure necessary to challenge value is clearly in place, has been implemented by the Petitioner, and a result and decision reached by the courts of Georgia. There is no need for an issuance of a Writ of Certiorari in this matter, because Georgia Law clearly provides adequate protections and procedures necessary for a condemnee to challenge all non-value issues in Georgia.

CONCLUSION

The Respondent respectfully requests that this Court deny Petitioner's Petition for Writ of Certiorari because Georgia Law clearly provides ample protections and procedures necessary for a citizen or condemnee to challenge all non-value issues brought under its Special Master's Act of 1957.

Respectfully submitted,

RALPH L. PHILLIPS, P.C.
Counsel of Record
P.O. Box 71563
2549 Lafayette Plaza Drive
Albany, Georgia 31708-0029
(912) 888-2022

WILBUR T. GAMBLE, III
P.O. Box 577
177 South Main Street
Dawson, Georgia 31742
(912) 995-5657

Attorneys for Respondent